

**INQUIRY COMMITTEE OF THE CANADIAN JUDICIAL COUNCIL IN RESPECT OF THE
CONDUCT OF THE HONOURABLE GÉRARD DUGRÉ, J.S.C.**

MEMBERS OF THE INQUIRY COMMITTEE:

The Honourable J.C. Marc Richard (President), Chief Justice of New Brunswick

The Honourable Louise A.M. Charbonneau, Chief Justice of the Supreme Court of the Northwest Territories

Audrey Boctor, IMK LLP

COUNSEL OF RECORD

For the Honourable Justice Dugré:

Magali Fournier, Ad. E., Fournier Avocat inc.

Gérald Tremblay, Ad. E., McCarthy Tétrault LLP

For the Inquiry Committee:

Giuseppe Battista, Ad. E., Battista Turcot Israel s.e.n.c.

Emmanuelle Rolland, Audren Rolland LLP

Decision on Request for Further Instructions

[UNOFFICIAL TRANSLATION]

[1] The Inquiry Committee (the **Committee**) was constituted under s. 63(3) of the *Judges Act*, R.S.C. 1985, c. J-1.

[2] The mandate of the Committee is to investigate and to provide the Canadian Judicial Council (**CJC**) with a report setting out its findings and advising whether to recommend that the Honourable Gérard Dugré, j.s.c., be removed from office for any of the reasons set out in s. 65(2) of the *Judges Act*.

[3] On April 16, 2020, the Committee issued instructions to counsel providing that Giuseppe Battista will be responsible for submitting the relevant evidence at the hearing.

[4] In anticipation of the hearing, which is scheduled to begin on January 18, 2021, Mr. Battista requests that the Committee issue further instructions, on the following:

- I. The filing of stenographic notes and recordings of the hearings as proof of their contents
- II. The filing of complaints in certain files without summoning the authors of the documents

III. The powers and duties of the Committee's counsel in charge of submitting the evidence in relation to witnesses to be met beforehand and witnesses summoned to attend at the hearing

IV. The scope of claim 1C in the Notice of Allegations

V. An email to be sent to Mr. Morin to inform him of the outcome of his complaint and the upcoming hearing

[5] Following this request for instructions, Mr. Battista and counsel for Justice Dugré submitted written arguments, and a case management hearing was held on December 17, 2020.

I. The filing of stenographic notes and recordings of the hearings as proof of their contents

[6] Mr. Battista and counsel for Justice Dugré agree that stenographic notes and recordings of the hearings can be filed to prove their contents without the need to summon a suitable witness to do so.

[7] They also agree that these notes and recordings must be filed as evidence in their entirety and that members of the Committee must review the entire recordings, which represent more than 46 hours of listening time.

[8] In order to simplify the conduct of the Committee's hearing, however, Mr. Battista proposes that, for certain files, only specific excerpts of the recordings related to the allegations be heard during the hearing (the excerpts themselves lasting more than 20 hours) and the Committee be invited to review the entire recordings during its deliberations. Counsel for Justice Dugré objected to this approach and insist that the entire recordings be heard during the hearing in order to ensure an adequate depiction of the context in which Justice Dugré allegedly made the impugned statements.

[9] The Committee grants Justice Dugré's request and will hear the entire recordings during the hearing, if that is what he seeks. However, with a view to proportionality and an efficient use of resources, the Committee invites counsel for Justice Dugré to attempt to identify excerpts that need not be heard during the hearing, provided they can jointly agree with Mr. Battista on their contents. For example, if a recording reveals that Justice Dugré did not intervene, or intervened infrequently, during submissions by counsel of record, it appears the Committee could simply be informed of this without having to spend hours listening to recordings during the hearing.

II. The filing of complaints in certain files without summoning the authors of the documents

[10] Mr. Battista and counsel for Justice Dugré disagree on the application of hearsay rules to the CJC's investigations.

[11] According to counsel for Justice Dugré, the usual rules of evidence apply and no document may be introduced into evidence without an appropriate witness¹. Rather, Mr. Battista

¹ Letter from Ms. Fournier to Mr. Battista, December 16, 2020

is of the opinion that the strict rules of evidence do not apply to the CJC's investigations, such that hearsay evidence may be admissible as long as the requirements of procedural fairness are met.

[12] The Committee does not intend to rule out of context on any rules of evidence or objections, notably, that the prohibition on hearsay evidence, even where it applies, is subject to numerous exceptions. At the hearing, Mr. Battista will submit the documents he intends to introduce into evidence and explain what he intends to establish with these. Justice Dugré will then be permitted to raise his objections, on which the Committee will rule.

III. The powers and duties of the Committee's counsel in charge of submitting the evidence in relation to witnesses to be met beforehand and witnesses summoned to attend the hearing

[13] While exercising his mandate, Mr. Battista met certain individuals who, pursuant to his judgment and analysis, could have relevant information related to the allegations that are the subject of this investigation. Following these steps, he provided counsel for Justice Dugré with the list of witnesses he intends to summon to attend at the hearing, and with the names and addresses of those witnesses who, in his view, might have relevant information².

[14] Counsel for Justice Dugré state that Mr. Battista did not meet everyone who is likely to have knowledge of the relevant facts. In particular, they argue that all individuals who were present at the hearings having led to the complaints, be they lawyers, parties, registrars or bailiffs, should be met and their names and addresses should be disclosed to them to allow them to prepare an adequate defence³.

[15] In addition, counsel for Justice Dugré initially requested additional time to submit their client's evidence once Mr. Battista has declared his case is closed⁴. Following the hearing on December 17th, they instead suggested that the hearing of the inquiry that will be held from January 18 to February 5, 2020 be dedicated to listening to the recordings of the hearings and to hearing discussions on these recordings⁵. In the alternative, they seek an adjournment of the hearing.

[16] Mr. Battista's approach was to meet, in preparation for the hearing, only those individuals he considered likely to give relevant testimony, with a view to serving them with a summons to attend the hearing. Generally speaking, counsel in charge of an investigation has some latitude in the conduct of the case assigned by the Committee, subject to the Committee's duty to conduct its investigation in accordance with the principle of fairness. The Committee is of the view that Mr. Battista's failure to meet, and to summon to attend the hearing, all individuals, regardless of their number if they can be located, who, for whatever reason, could have been present in the courtroom during all or part of the hearings, does not constitute a breach of this principle. Moreover, in the course of its investigation into complaints relating specifically to comments

² Letter from Mr. Battista to Ms. Fournier and Mr. Tremblay, December 14, 2020

³ Letter from Ms. Fournier to the Inquiry Committee, December 8, 2020

⁴ Letter from Ms. Fournier to Mr. Battista, December 16, 2020

⁵ Letter from Ms. Fournier to the Inquiry Committee, December 21, 2020

allegedly made by Justice Dugré at hearings, the Committee is prepared to hear the entire recordings of these hearings. Accordingly, the Committee does not intend to give Mr. Battista any further instructions with respect to witnesses he must meet or summon to attend the hearing.

[17] Justice Dugré may summon to attend at the hearing any person who, in his opinion, is likely to provide useful and relevant additional information. In order to respond to the concerns expressed by Justice Dugré, the Committee orders that the hearing that will be held from January 18 to February 5, 2021 be used for the submission of evidence by counsel for the Committee and for cross-examinations, if any, by counsel for Justice Dugré. In addition, the Committee orders that the introduction of evidence begin with playing the audio recordings and hearing counsel's submissions on these.

[18] The hearing will then be adjourned to allow counsel for Justice Dugré additional time to call any additional witnesses whose attendance they deem necessary. It will resume on April 12, 2021 for an additional two weeks. If the parties are unable to reconvene on that date, the Committee should be notified as soon as possible so that a new date can be set. In view of our decision on the order of presentation of the evidence, we do not consider it necessary to rule on the subsidiary request for an adjournment.

IV. The scope of allegation 1C in the Notice of Allegations

[19] In the detailed Notice of Allegations, the Committee stated the following with respect to the Morin file (CCM 19-0374):

[TRANSLATION]

31. The judgment in question is part of the delays noted at the time of Chief Justice Rolland's second complaint in 2014. The Inquiry Committee is of the opinion that **there is no need to launch an investigation or to make a separate allegation in connection with this particular file, as it will be considered in connection with allegation 1C.**

(Emphasis added)

[20] Allegation 1C arises from information received from the Honourable Chief Justice Jacques R. Fournier, of the Superior Court of Québec, in the context of reviewing the K.S. file (CJC 18-0301), which noted, among other things, the existence of previous complaints by former Chief Justice François Rolland. It reads as follows:

[TRANSLATION]

1C Does the conduct of Justice Dugré demonstrate a chronic problem in rendering judgment and, if so, is Justice Dugré otherwise incapacitated or disabled from the due execution of his office?

[21] According to Mr. Battista, it is not necessary to summon Mr. Morin to testify at the hearing since no separate allegation was made regarding his complaint. However, he does not object to being served by Justice Dugré with a summons to witness.

[22] Counsel for Justice Dugré, while maintaining that the Morin file should be entirely set aside, argue that filing the documents related to this file in evidence requires the testimony of Mr. Morin⁶.

[23] As mentioned above, objections related to the evidence will be heard at the hearing. Once Mr. Battista has submitted his evidence, if counsel for Justice Dugré are of the opinion that Mr. Morin's testimony is required, they will have the opportunity to summon him for the resumption of the hearing in April.

V. An email to be sent to Mr. Morin to inform him of the outcome of his complaint and the upcoming hearing

[24] Mr. Battista pointed out that Mr. Morin was never notified of the outcome of his complaint. The Committee will ask the CJC to send this correspondence to Mr. Morin:

[TRANSLATION]

Dear Sir:

On November 7, 2019, the Canadian Judicial Council announced the constitution of an Inquiry Committee into the conduct of the Honourable Gérard Dugré, j.s.c.

The complaint that you filed with the Canadian Judicial Council on September 26, 2019 was referred to this Inquiry Committee.

On March 4, 2020, the Inquiry Committee issued a detailed Notice of Allegations setting out the subject-matter of its investigation, a copy of which is attached.

As may be seen in paragraph 31 of this Notice of Allegations, the Inquiry Committee decided not to launch an investigation or to make a separate allegation in relation to your file, but to consider it as part of an allegation related to delays in rendering judgment.

The hearing of the Inquiry Committee will be held in Montreal beginning on January 18, 2021. Details will be posted on the Canadian Judicial Council website. You are not required to be present at the hearing unless you receive a summons to witness. If you are not summoned to testify, however, you may attend the hearing as a member of the public.

[25] In light of the foregoing, the hearing of the Committee will begin as scheduled on January 18, 2021 and will be held in Montreal. The Committee will sit from Monday to Friday, from 9 a.m. to 4:30 p.m.

⁶ Letter from Ms. Fournier to the Inquiry Committee, December 8, 2020

[Official French version signed]:

December 23, 2020		December 23, 2020
The Honourable J.C. Marc Richard		The Honourable Louise A.M. Charbonneau
December 23, 2020		
Audrey Boctor		